

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 24, 2008

STATE OF TENNESSEE v. AMANDA MICHELLE SLAUGHTER

**Appeal from the Criminal Court for Sullivan County
No. S53060 R. Jerry Beck, Judge**

No. E2007-02599-CCA-R3-CD - Filed August 26, 2008

The defendant pleaded guilty to one count of facilitation of the sale of .5 grams or more of cocaine, a Class C felony. She was sentenced to a term of four years in the Department of Correction. The defendant now challenges the trial court's denial of alternative sentencing. Upon reviewing the record, we affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which DAVID H. WELLES and CAMILLE R. McMULLEN, JJ., joined.

Stephen M. Wallace, District Public Defender; and Joseph F. Harrison, Assistant Public Defender, for the appellant, Amanda Michelle Slaughter.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Joseph Eugene Perrin, Assistant District Attorney, for the appellee, State of Tennessee.

OPINION

The defendant, Amanda Michelle Slaughter, pleaded guilty to one count of facilitation of the sale of .5 grams or more of cocaine, a Class C felony. *See* T.C.A. § 39-17-417(a)(4), (c)(1); 39-11-403 (2006). Pursuant to a plea agreement with the State, the trial court imposed a sentence of four years at 30 percent, and a sentencing hearing was set to determine the manner of service of the sentence. Following the November 13, 2007 sentencing hearing, the trial court ordered the defendant to serve her sentence in confinement.

At the plea submission hearing, the State presented the following facts:

On April the 29th of 2006 the individual that was cooperating with the Tennessee Bureau of Investigations [TBI] drug investigation into a conspiracy in Kingsport agreed to contact an

individual by the name of Stewart Propst who lived in the Cloud public housing apartments. Mr. Propst was living at that time with [the defendant], his girlfriend.

The purpose of the informant's contacting Mr. Propst was to order up cocaine through Mr. Propst, and in a recorded and controlled phone call the informant made a call to Mr. Propst.

Mr. Propst was asked about being able to hook up the informant with cocaine, and Mr. Propst directed that the informant come to the apartment that he shared with [the defendant].

The confidential informant, who had been searched both before and after and found to be free and clear of cocaine or other contraband, was under surveillance by officers who followed him to the apartment of Mr. Propst and [the defendant]. While there at the apartment the informant, who was equipped with a wire that allowed the monitoring by the agents as well as the recording of the conversation, was overheard to be speaking to both Mr. Propst and to [the defendant] about setting up the purchase of cocaine with an unidentified individual.

Throughout the course of the conversations [the defendant] was an active participant, made several phone calls as the confidential informant waited for the supplier of cocaine, and [the defendant] continued to keep the confidential informant, as well as Mr. Propst, up-to-date on when she expected the supplier of the cocaine to arrive at the apartment.

[The defendant] revealed during the recording that she personally knew the supplier and that he lived only a few blocks over from where she and Mr. Propst lived. Throughout the wait it became apparent that the supplier of the cocaine was not going to travel to Cloud Apartments because of the belief that police were present, and so a separate meeting place was arranged and the confidential informant, along with Mr. Propst, went to this other meeting place where Mr. Propst met with an unidentified [b]lack male out of the presence of the informant after having been given \$1,200 for the purchase of cocaine.

Mr. Propst returned to the informant's car after meeting with the unidentified [b]lack male, where he exchanged or turned over to the informant a substance that was later tested by the

[TBI] chemistry section and proved positive for approximately one-half ounce of cocaine, a Schedule II controlled substance.

After the transaction was complete, the confidential informant and Mr. Propst returned to Mr. Propst's apartment. Once again this was under the surveillance and observation of officers that followed the confidential informant back.

After Mr. Propst and the confidential informant went into the Cloud Apartment, the confidential informant soon thereafter left and turned over the cocaine, which was later tested and proved positive.

The agent investigating this case, Agent Chuck Kimbrell with the [TBI], later had an opportunity to speak with [the defendant] over the phone regarding what had transpired. At that point in time [the defendant] had indicated that while she was staying with Mr. Propst she had remained high on cocaine for a good part of that time due to Mr. Propst providing her with the cocaine, and that she was going to place herself into drug treatment.

After meeting with Agent Kimbrell, it was decided that Ms. Propst would be allowed, if she desired, to plead to a lesser charge of facilitation of the sale of over one-half gram of cocaine, which includes this negotiation; included that she would testify truthfully as needed in the prosecution of State v. Propst.

At the sentencing hearing, the state presented only the presentence report. The defendant testified that she was 28 years old, had been separated from her husband for two-and-half years, and is the mother of one child, of whom she has full custody. Since her release on bond, she had lived with her mother and her mother's boyfriend. She began working full-time at Wendy's restaurant after being released from jail and was currently up for a promotion.

The defendant detailed a history of drug and alcohol abuse that began at the age of 13. She testified that the present charge was what she needed to "seriously smack [her] in the face." She completed a 28-day drug treatment program on October 5, 2007, and was receiving follow-up counseling on an outpatient basis once a week. The defendant also received medication for "depression and stuff" and attended Narcotics Anonymous meetings four times a week when work did not conflict.

When questioned about her prior criminal record, the defendant admitted to a 2001 conviction of misdemeanor theft in the Kingsport General Sessions Court that resulted in probation, a second conviction of misdemeanor theft in Kingsport General Sessions court that occurred while she was still on probation, 2002 convictions on two counts of misdemeanor theft in Washington

County Criminal Court, a 2005 conviction of driving on a suspended license, and a 2007 conviction of misdemeanor theft in Kingsport General Sessions Court. The defendant testified that she was “pretty sure [she] was on crack cocaine pretty bad” when committing these crimes.

At the conclusion of the hearing, the trial court denied alternative sentencing based on the defendant’s criminal record, social history, and history of violating probation. The judge noted that the defendant’s criminal record was of “great concern,” that “judge[s] before me [have] put her on probation and it hasn’t accomplished anything,” and that the defendant has “basically . . . been in problems all of her adult life.”

In this appeal, the defendant claims that the trial court erred by denying alternative sentencing. The State contends that the trial court properly ordered the defendant to serve her entire sentence in confinement.

When a defendant challenges the manner of service of a sentence, this court generally conducts a de novo review of the record with a presumption that the determinations made by the trial court are correct. T.C.A. § 40-35-401(d) (2006). This presumption, however, is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). The burden of showing that the sentence is improper is upon the defendant. *Id.* If the review reflects the trial court properly considered all relevant factors and its findings of fact are adequately supported by the record, this court must affirm the sentence, “even if we would have preferred a different result.” *State v. Fletcher*, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991). In the event the record fails to demonstrate the required consideration by the trial court, appellate review of the sentence is purely de novo. *Ashby*, 823 S.W.2d at 169.

In making its sentencing determination in the present case, the trial court, at the conclusion of the sentencing hearing, was obliged to determine the propriety of sentencing alternatives by considering (1) the evidence, if any, received at the guilty plea and sentencing hearings, (2) the presentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct involved, (5) evidence and information offered by the parties on the enhancement and mitigating factors, (6) any statements the defendant made in his behalf about sentencing, and (7) the potential for rehabilitation or treatment. T.C.A. § 40-35-210(a), (b); -103(5); *State v. Holland*, 860 S.W.2d 53, 60 (Tenn. Crim. App. 1993).

A defendant who is an especially mitigated or standard offender convicted of a Class C, D, or E felony “should be considered” to be a favorable candidate for alternative sentencing options “in the absence of evidence to the contrary,” T.C.A. § 40-35-102(6) (2006), but the trial court “is not bound by[] this advisory sentencing guideline,” *id.* As a standard offender convicted of a Class C felony, the defendant is, eligible for, but not entitled to a presumption in favor of, alternative sentencing. *See id.*; *see also State v. Stacy Joe Carter*, 254 S.W.3d 335, 347 (Tenn. 2008). An alternative sentence is any sentence that does not involve total confinement. *See generally State v. Fields*, 40 S.W.3d 435 (Tenn. 2001). In addition, because the sentence imposed is ten years or less, the trial court was also required to consider full probation as a sentencing option.

See T.C.A. § 40-35-303(a), (b). A defendant's potential for rehabilitation or lack thereof should be examined when determining whether probation is appropriate. *Id.* 40-35-103(5).

The trial court's determinations whether the defendant is entitled to an alternative sentence and whether the defendant is a suitable candidate for full probation are different inquiries with different burdens of proof. *State v. Boggs*, 932 S.W.2d 467, 477 (Tenn. Crim. App. 1996). "[T]he burden of establishing suitability for probation rests with the defendant." *Id.* § 40-35-303(b). This burden includes demonstrating that probation will "subserve the ends of justice and the best interest of both the public and the defendant." *State v. Dykes*, 803 S.W.2d 250, 259 (Tenn. Crim. App. 1990) (quoting *Hooper v. State*, 297 S.W.2d 78, 81 (1956)), *overruled on other grounds by Hooper*, 29 S.W.3d at 9-10. When the defendant is considered a favorable candidate for alternative sentencing, a sentence of full confinement may be justified when the trial court finds that:

(A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;

(B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or

(C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant[.]

T.C.A. § 40-35-103(1)(A)-(C). In the defendant's case, given her criminal history and willingness to commit further crimes while on probation, factors (A) and (C) of Code section 40-35-103(1) warrant the denial of any alternative sentencing. We hold that the trial court did not err in its denial of alternative sentencing.

Accordingly, the judgment of the trial court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE